

APPEAL NO. 023237  
FILED FEBRUARY 14, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 10, 2002. The hearing officer determined that the respondent (claimant herein) sustained a compensable repetitive trauma injury with a date of injury of \_\_\_\_\_, and that the claimant had disability resulting from the compensable injury beginning on April 24, 2002, and continuing through the date of the CCH. The appellant (carrier herein) files a request for review, arguing that this decision was contrary to the evidence. The carrier argues that the hearing officer erred in giving greater weight to the claimant's testimony than to the opinion of the carrier's required medical examination doctor and to a time and motion study commissioned by the carrier. There is no response to the carrier's request for review from the claimant in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The question of whether an injury occurred is one of fact. Texas Workers' Compensation Commission Appeal No. 93449, decided July 21, 1993. Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

A finding of injury may be based upon the testimony of the claimant alone. Gee v. Liberty Mutual Fire Insurance Co., 765 S.W.2d 394 (Tex. 1989). In the present case,

the hearing officer's finding of injury was supported both by the testimony of the claimant and medical evidence. The fact that the carrier presented conflicting evidence merely created a conflict in the evidence for the hearing officer to resolve. Applying the standard of review set out above, we find no error in the hearing officer's resolution of the conflicts in the evidence and the issue of injury.

As the carrier's appeal of disability rests upon its appeal of the issue of injury, we find no basis to reverse the hearing officer's finding of disability in light of our finding of no error in his finding of injury.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750, COMMODORE 1  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Daniel R. Barry  
Appeals Judge

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Chris Cowan  
Appeals Judge